

900 KAR 1:009. Employee Access to Federal Tax Information (FTI).

RELATES TO: KRS 18A.095, 194A.005, 194A.062, 335B.010, 335B.020, 26 C.F.R. 301.6103(p)(7)-1, 26 U.S.C. 6103

STATUTORY AUTHORITY: KRS 194A.062(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.062(1) requires each employee of the cabinet, including contract staff, with access to or use of federal tax information (FTI) to submit to a criminal background investigation by means of a fingerprint check by the Department of Kentucky State Police and the Federal Bureau of Investigation. KRS 194A.062(2) requires the cabinet to promulgate an administrative regulation to implement that requirement. This administrative regulation establishes requirements for fingerprint-based state and national criminal background checks for prospective and current employees, including contract staff whose job duties include access to or use of FTI.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 194A.005(1).

(2) "Disqualifying offense" means a conviction, plea of guilty, Alford plea, or plea of nolo contendere to any felony, misdemeanor during the preceding seven (7) years, or offense the nature of which indicates that the employee constitutes an unreasonable and immediate risk to the security of federal tax information, as determined by the cabinet.

(3) "Federal tax information" or "FTI" means federal tax returns and return information that may:

- (a) Contain personally identifiable information; and
- (b) Include information created by the recipient that is:
 - 1. Derived from federal return or return information; and
 - 2. Received directly from the Internal Revenue Service (IRS) or obtained through an authorized secondary source, which may include:
 - a. Social Security Administration (SSA);
 - b. Federal Office of Child Support Enforcement (OCSE);
 - c. Bureau of the Fiscal Service (BFS);
 - d. Centers for Medicare and Medicaid Services (CMS); or
 - e. Another entity acting on behalf of the IRS.

(4) "Rap back service" means a notification program in which the cabinet or responsible agency, upon approval to participate in the program, will be informed if an individual who has undergone a fingerprint-based criminal background check in accordance with the requirements of this administrative regulation, and whose fingerprints are retained by the Department of Kentucky State Police or the Federal Bureau of Investigation, is subsequently arrested.

(5) "Responsible agency" means an office or department within the cabinet, or an entity under contract with the cabinet, that employs or offers a job to an individual in a position for which the job duties include access to or use of FTI.

Section 2. Requirement for Criminal Background Checks. (1) As a condition of initial application for employment or continued employment either directly or by contract in a position for which the job duties include access to or use of FTI, the cabinet or responsible agency shall require a prospective or current employee, including contract staff, to submit to a fingerprint-based state and national criminal background check:

- (a) After the individual is offered a job but before he or she begins working; and
- (b) At least one (1) time during each ten (10) year period for a current employee or contract staff.

(2) The responsible agency that requests a fingerprint-based state and national criminal

background check on behalf of a prospective or current employee shall incur all fees included in the actual cost of each background check requested, including the rap back service.

(3) The cabinet or responsible agency shall not employ directly or by contract an individual in a position for which the job duties include access to or use of FTI if the individual:

(a) Refuses to consent to a fingerprint-based state and national criminal background check; or

(b) Is found to have a disqualifying offense.

(4) The cabinet or responsible agency shall notify each prospective or current employee determined to have a disqualifying offense.

Section 3. Disqualification for Other Criminal Offenses or Factors. The cabinet or responsible agency shall not be obligated to employ or offer employment to an individual with a criminal offense not specifically listed in Section 1(2) of this administrative regulation or other factor that bears upon the fitness of the individual to work in a position for which the job duties include access to or use of FTI.

Section 4. Challenges to Criminal History Record Information. An individual subject to a criminal background check required by KRS 194A.062(1) and this administrative regulation shall have the right to request and inspect his or her criminal history record and to request correction of any inaccurate information.

Section 5. Rehabilitation Review. (1) A prospective or current cabinet employee found to have a disqualifying offense upon completion of the criminal background check shall be eligible for consideration of rehabilitation under an independent review process.

(2) A prospective or current cabinet employee may submit a written request for a rehabilitation review to the Office of Human Resource Management no later than fourteen (14) calendar days from the date of notice of a disqualifying offense issued pursuant to Section 2(4) of this administrative regulation.

(3) A current cabinet employee who requests a rehabilitation review may be retained on staff if the employee is assigned duties that do not include access to or use of FTI.

(4) The request for a rehabilitation review shall include the following information:

(a) A written explanation of each disqualifying offense, including:

1. A description of the events related to the disqualifying offense;

2. The number of years since the occurrence of the disqualifying offense;

3. The age of the offender at the time of the disqualifying offense;

4. Evidence that the individual has pursued or achieved rehabilitation with regard to the disqualifying offense; and

5. Any other circumstances surrounding the offense;

(b) Official documentation showing that all fines, including court-imposed fines or restitution, have been paid or documentation showing adherence to a payment schedule, if applicable;

(c) The date probation or parole was satisfactorily completed, if applicable; and

(d) Employment and character references, including any other evidence demonstrating the ability of the individual to perform the employment responsibilities and duties competently.

(5) A rehabilitation review shall be conducted by a committee of three (3) employees of the Office of Human Resource Management.

(6) The committee shall consider the information required under subsection (4) of this section, and shall also consider mitigating circumstances including:

(a) The amount of time that has elapsed since the disqualifying offense;

(b) The lack of a relationship between the disqualifying offense and the:

1. Position for which the prospective employee has applied; or
 2. Cabinet employee's current position; and
- (c) Evidence that the prospective or current cabinet employee has pursued or achieved rehabilitation with regard to the disqualifying offense.
- (7) No later than thirty (30) calendar days from receipt of the written request for the rehabilitation review, the Office of Human Resource Management shall send the committee's determination on the rehabilitation waiver to the prospective or current employee.
- (8) The prospective or current employee may appeal the results of a rehabilitation review to the Personnel Board in accordance with KRS 18A.095.

Section 6. Pardons and Expungement. An applicant or current employee who has received a pardon for a disqualifying offense or has had the record expunged may be employed in a position with job duties that include access to or use of FTI. (44 Ky.R. 1779; eff. 3-15-2018.)